



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

0066 999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2405
August 23, 1990

file ACT/007/005
#7

Ref: 8WM-C

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 04 1990
DIVISION OF
OIL PASS PERMITTING

Mr. Keith Welch
Coastal States Energy Company
175 East 400 South, Ste 800
Salt Lake City, Utah 84111

Dear Mr. Welch:

Enclosed is the NPDES permit for The Coastal States Energy Company,
UT-0023540. This permit shall become
effective upon the date specified unless, within thirty (30) days
following the date of receipt, you submit a request for an
evidentiary hearing in accordance with the provisions of 40 CFR
Section 124.74. Any evidentiary hearing request must be
addressed to:

Regional Administrator (8A)
U.S. Environmental Protection Agency
Region VIII, Denver Place
999 18th Street, Suite 500
Denver, Colorado 80202-2405

We have attached blank Discharge Monitoring Report (DMR)
forms. Your facility should use these forms to report all
discharge data at the frequency required in your permit.

If you have any legal questions with regard to this permit,
please contact the Regional Counsel's office at (303) 293-7568.
Questions regarding monitoring requirements, schedules and permit
limitations should be directed to the Compliance Branch at (303)
293-1588.

Sincerely yours,

Max H. Dodson
Director
Water Management Division

Enclosures

NPDES Discharge Permit
EPA Form 3320-1 for reporting DMR

Permit No.: UT-0023540

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
DENVER PLACE
999 18TH STREET, SUITE 500
DENVER, COLORADO 80202-2405

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. Section 1251 et seq; the "Act"),

The Coastal States Energy Company - Utah Fuel Company, Skyline Mine,

is authorized to discharge from a facility located in Section 13, Township 13 South, Range 6 East, and Section 17, Township 13 South, Range 7 East, Carbon County, Utah,

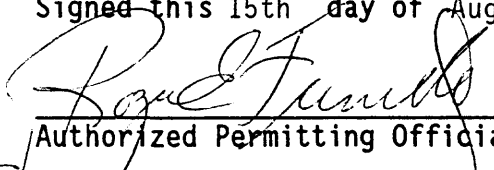
to receiving water named Eccles Creek, a tributary of the Price River,

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.


This permit shall become effective September 1, 1990.

This permit and the authorization to discharge shall expire at midnight, September 30, 1994.

Signed this 15th day of August, 1990.



Authorized Permitting Official


Max H. Dodson
Director
Water Management Division

Title

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I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Definitions.

1. The "30-day (and monthly) average," other than for fecal coliform bacteria and total coliform bacteria, is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. Geometric means shall be calculated for fecal coliform bacteria and total coliform bacteria. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.
2. The "7-day (and weekly) average," other than for fecal coliform bacteria and total coliform bacteria, is the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. Geometric means shall be calculated for fecal coliform bacteria and total coliform bacteria. The 7-day and weekly averages are applicable only to those effluent characteristics for which there are 7-day average effluent limitations. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.
3. "Daily Maximum" ("Daily Max.") is the maximum value allowable in any single sample or instantaneous measurement.
4. "Composite samples" shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;

A. Definitions (Continued)

- c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
 - d. Continuous collection of sample, with sample collection rate proportional to flow rate.
- 5. A "grab" sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.
 - 6. An "instantaneous" measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.
 - 7. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
 - 8. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
 - 9. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - 10. "Director" means Director of the United States Environmental Protection Agency's Water Management Division.
 - 11. "EPA" means the United States Environmental Protection Agency.
 - 12. "Active mining area" means the areas on and beneath land used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.

A. Definitions (Continued)

13. "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.
14. The term "10-year, 24-hour precipitation event" shall mean the maximum 24-hour precipitation event with a probable reoccurrence interval of once in 10 years as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.
15. The term "coal preparation plant" means a facility where coal is crushed, screened, sized, cleaned, dried, or otherwise prepared and loaded for transit to a consuming facility.
16. The term "coal preparation plant associated areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, and coal storage piles and facilities.
17. The term "settleable solids" is that matter measured by the volumetric method specified below:

The following procedure is used to determine settleable solids:

Fill an Imhoff cone to the one-liter mark with a thoroughly mixed sample. Allow to settle undisturbed for 45 minutes. Gently stir along the inside surface of the cone with a stirring rod. Allow to settle undisturbed for 15 minutes longer. Record the volume of settled material in the cone as milliliters per liter. Where a separation of settleable and floating material occurs, do not include the floating material in the reading.

18. "Sewage Sludge" is any solid, semi-solid or liquid residue that contains materials removed from domestic sewage during treatment. Sewage sludge includes, but is not limited to, primary and secondary solids and sewage sludge products.
19. "Acute Toxicity" occurs when 50 percent or more mortality is observed for either species (See Part I.C.) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.
20. "Chronic Toxicity" occurs when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see Part I.C.), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.

B. Description of Discharge Points

The authorization to discharge provided under this permit is limited to those outfalls specifically designated below as discharge locations. Discharges at any location not authorized under an NPDES permit is a violation of the Clean Water Act and could subject the persons responsible for such discharge to penalties under Section 309 of the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from first learning of an unauthorized discharge could subject such person to criminal penalties as provided under the Clean Water Act.

OutfallSerial NumberDescription of Discharge Point

001

Outfall from sedimentation pond at mine site. Water sources to the pond are surface runoff, process water, and mine drainage from the mine portal.

002

Outfall from sedimentation pond at the coal storage and railroad loading facility. Pond detains only surface runoff and associated sediment from rail loadout and coal storage sites.

C. Specific Limitations and Monitoring Requirements

1. During the period beginning immediately and lasting through the life of this permit, the permittee is authorized to discharge from Outfalls 001 and 002. Such discharges shall be limited and monitored at each outfall by the permittee as specified below:

<u>Effluent Characteristics</u>	<u>Monthly Average</u>	<u>7-Day Average</u>	<u>Daily Maximum</u>	<u>Sample Type</u> a/	<u>Frequency</u>
Flow, MGD	N/A	N/A	N/A	Measured c/	Twice per month
Total Suspended Solids, mg/L	25	35	70	Grab	Twice per month
Iron (Total), mg/L b/	N/A	N/A	2.0	Grab	Twice per month
Iron (acid soluble) mg/L b/	N/A	N/A	1.0	Grab	Twice per month
Total Dissolved Solids, mg/L	N/A	N/A	1,000 ^{1/}	Grab	Twice per month
Sulfates (Total), mg/L	N/A	N/A	500	Grab	Once per quarter
Nitrate (Total), mg/L	N/A	N/A	N/A	Grab	Once per quarter
Nitrite (Total), mg/L	N/A	N/A	N/A	Grab	Once per quarter

- 1/ Yearly average of TDS shall not exceed 723 mg/L.

Oil and Grease shall not exceed 10 mg/L and shall be monitored once per week by a grab sample.

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units and shall be monitored once per week by grab sample.

There shall be no discharge of floating solids or visible foam in other than trace amounts.

There shall be no discharge of sanitary wastes.

- a/ See Definitions, Part I.A. for definition of terms.
- b/ If any Iron analysis exceeds this limitation, the State of Utah and the permittee shall review the actions necessary to achieve compliance with the limitation and the continued appropriateness of the limitation.
- c/ For the intermittent discharges, the duration of the discharge shall be reported.

C. Specific Limitations and Self-Monitoring Requirements (Continued)

2. Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) at Outfalls 001 or 002 may comply with the following limitation instead of the otherwise applicable limitations contained in Part I.

<u>Effluent Characteristic</u>	<u>Daily Maximum</u>
Settleable Solids	0.5 ml/L

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units. In addition to the monitoring requirements specified under Part I, C.1, all effluent samples collected during storm water discharge events shall also be analyzed for settleable solids. Such analyses shall be conducted on grab samples.

3. Any overflow, increase in volume of a discharge or discharge from a bypass system caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) at Outfalls 001 and 002 may comply with the following limitations instead of the otherwise applicable limitations:

The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units. However, as stated under Part I., C.2., all effluent samples collected at Outfalls 001 and 002 during storm water discharge events shall be analyzed for settleable solids and the parameters identified under Part I, C.1.

4. The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in Parts I, C.2. and C.3. The alternate limitations in Parts I, C.2. and C.3. shall not apply to treatment systems that treat underground mine water only.

5. Best Management Practices.

The company shall implement and maintain best management practices for the control of road salt storage and dust suppressent runoff, and for the prevention of the discharge of process water from coal preparation by using the largest practical amount of saline water for process dust control.

C. Specific Limitations and Self-Monitoring Requirements

6. Whole Effluent Toxicity Testing - Acute Toxicity

Starting in the third quarter of calendar year 1990, the permittee shall, at least once each calendar quarter, conduct acute static replacement toxicity tests on a grab sample of the final effluent. Quarterly samples shall be collected on a two day progression; i.e., if the first quarterly sample is on a Monday, during the next quarter, sampling shall begin on a Wednesday, etc.

The replacement static acute toxicity tests shall be conducted in general accordance with the procedures set out in the latest revision of "Methods of Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms", EPA-600/4-85-013 (Rev. March 1985) and the "Region VIII EPA NPDES Acute Test Conditions - Static Renewal Whole Effluent Toxicity Tests." In the case of conflicts, the Region VIII Document will prevail. The permittee shall conduct an acute 48-hour static toxicity test using *Ceriodaphnia* sp. and the acute 96-hour static replacement toxicity test using fathead minnows.

Acute toxicity occurs when 50 percent or more mortality is observed for either species at any effluent concentration. If more than 10 percent control mortality occurs, the test shall be repeated until satisfactory control survival is achieved.

If acute toxicity occurs in a routine test, an additional test shall be conducted within four weeks of the date of the initial sample. Should acute toxicity occur in the second test, testing shall occur once a month until further notified by the permit issuing authority.

Quarterly test results shall be reported along with the Discharge Monitoring Report (DMR) submitted for the end of the reporting calendar quarter (e.g., whole effluent results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining reports submitted with DMRs due each July 28, October 28, and January 28). Monthly test results shall be reported along with the DMR submitted for that month. The format for the report shall be consistent with the latest revision of the "Region VIII Guidance for Acute Whole Effluent Reporting, and shall include all chemical and physical data as specified.

If the results for the first four consecutive quarters of testing indicate no acute toxicity, the permittee may request the permit issuing authority to allow a reduction to quarterly acute toxicity testing on only one species. The permit issuing authority may approve or deny the request based on the results and other available information without an additional public notice. If the request is approved, the test procedures are to be the same as specified above for the test species.

C. Specific Limitations and Self-Monitoring Requirements

8. Toxicity Reduction Evaluation (TRE)

If toxicity is detected, and it is determined by the permit issuing authority that a TRE is necessary, the permittee shall be so notified and shall initiate a TRE immediately thereafter. The purpose of the TRE will be to establish the cause of the toxicity, locate the source(s) of the toxicity, and control or provide treatment for the toxicity prior to the deadline for compliance contained in Part I, C.6. and C.7. of this permit.

If the TRE establishes that the toxicity cannot be eliminated by the deadline contained in this permit, the permittee shall submit a proposed compliance plan to the permit issuing authority. The plan shall include the proposed approach to control toxicity and a proposed compliance schedule for achieving control.

If the TRE shows that the toxicity is caused by a toxicant(s) that may be controlled with specific numerical limitations, the permittee may:

- a. Submit an alternative control program for compliance with the numerical requirements.
- b. If necessary, provide a modified whole effluent testing protocol which compensates for the pollutant(s) being controlled numerically.

If acceptable to the permit issuing authority, this permit may be reopened and modified to incorporate any additional numerical limitations, a modified compliance schedule if judged necessary by the permit issuing authority, and/or a modified whole effluent protocol.

Failure to conduct an adequate TRE, or failure to submit a plan or program as described above, or the submittal of a plan or program judged inadequate by the permit issuing authority, shall in no way relieve the permittee from the deadline for compliance contained in Part I, C.6. and C.7. of this permit.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to use-disposal practice.
- B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit. See Part I.C. for any applicable sludge monitoring procedures.
- C. Penalties for Tampering. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both.
- D. Reporting of Monitoring Results. Effluent monitoring results obtained during the previous month shall be summarized for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Until further notice, sludge monitoring results may be reported in the testing laboratory's normal format (there is no EPA standard form at this time), but should be on letter size pages. Whole effluent toxicity (biomonitoring) results must be reported on the most recent version of EPA Region VIII's Guidance For Whole Effluent Reporting. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (see Part IV), and submitted to the Director, Water Management Division and the State water pollution control agency at the following addresses:

original to: United States Environmental Protection Agency
Region VIII
Denver Place
999 18th Street, Suite 500
Denver, Colorado 80202-2405

Attention: Water Management Division
Compliance Branch (8WM-C)

copy to: Utah Department of Health
Bureau of Water Pollution Control
P.O. Box 16690
Salt Lake City, Utah 84116-0690

- E. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.
- F. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.
- G. Records Contents. Records of monitoring information shall include:
1. The date, exact place, and time of sampling or measurements;
 2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
 3. The date(s) analyses were performed;
 4. The time(s) analyses were initiated;
 5. The initials or name(s) of individual(s) who performed the analyses;
 6. References and written procedures, when available, for the analytical techniques or methods used; and,
 7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.
- H. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on site during the duration of activity at the permitted location.

I. Twenty-four Hour Notice of Noncompliance Reporting.

1. The permittee shall report any noncompliance which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region VIII, Emergency Response Branch at (303) 293-1788 and the State of Utah at (801) 538-6333.
2. The following occurrences of noncompliance shall be reported by telephone to the EPA, Region VIII, Compliance Branch at (303) 293-1589 and the State of Utah at (801) 538-6146 by the first workday (8:00 a.m. - 4:30 p.m. Mountain Time) following the day the permittee became aware of the circumstances:
 - a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Part III.G., Bypass of Treatment Facilities.);
 - b. Any upset which exceeds any effluent limitation in the permit (See Part III.H., Upset Conditions.); or,
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.
3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected; and,
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
4. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Compliance Branch, Water Management Division, Denver, Colorado, by phone, (303) 293-1589.
5. Reports shall be submitted to the addresses in Part II.D., Reporting of Monitoring Results.

- J. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.D. are submitted. The reports shall contain the information listed in Part II.I.2.
- K. Inspection and Entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
 4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

III. COMPLIANCE RESPONSIBILITIES

- A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Director advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.
- B. Penalties for Violations of Permit Conditions. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Sections 301, 302, 306, 307, or 308 of the Act is subject to a fine of not less than \$5,000, nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. Except as provided in permit conditions on Part III.G., Bypass of Treatment Facilities and Part III.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.
- C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

- F. Removed Substances. Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the United States.
- G. Bypass of Treatment Facilities:
1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2. and 3. of this section.
 2. Notice:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 60 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I., Twenty-four Hour Reporting.
 3. Prohibition of bypass.
 - a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:
 - (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
 - (3) The permittee submitted notices as required under paragraph 2. of this section.
 - b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions.

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph 2. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under Part II.I., Twenty-four Hour Notice of Noncompliance Reporting; and,
 - d. The permittee complied with any remedial measures required under Part III.D., Duty to Mitigate.
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

- I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in her regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

- J. Changes in Discharge of Toxic Substances. Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:
1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. One hundred micrograms per liter (100 ug/L);
 - b. Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).
 2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. Five hundred micrograms per liter (500 ug/L);
 - b. One milligram per liter (1 mg/L) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,
 - d. The level established by the Director in accordance with 40 CFR 122.44(f).

IV. GENERAL REQUIREMENTS

- A. Planned Changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b);
 2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Part IV.A.1.; or,
 3. There are any planned substantial changes to the existing sewage sludge facilities, the manner of its operation, or to current sewage sludge management practices of storage and disposal. The permittee shall give the Director notice of any planned changes at least 30 days prior to their implementation.
- B. Anticipated Noncompliance. The permittee shall give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- C. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- D. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.
- E. Duty to Provide Information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.
- F. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

G. Signatory Requirements. All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
- c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described above and submitted to the Director, and,
- b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.G.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for

G. Signatory Requirements (Continued)

gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- H. Penalties for Falsification of Reports. The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both.
- I. Availability of Reports. Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.
- J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.
- K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
- L. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- M. Transfers. This permit may be automatically transferred to a new permittee if:
1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;
 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,

M. Transfers (Continued)

3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2. above.

N. State Laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.O. Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
2. Wasteload Allocation: A wasteload allocation is developed and approved by the State and/or EPA for incorporation in this permit.
3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
4. Sewage Sludge: There have been substantial changes (or such changes are planned) in sewage sludge use or disposal practices; applicable management practices or numerical limitations for pollutants in sludge have been promulgated which are more stringent than the requirements in this permit; and/or it has been determined that the permittee's sewage sludge use or disposal practices do not comply with existing applicable state or federal regulations.

- P. Toxicity Limitation-Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include a new compliance date, additional or modified numerical limitations, a new or different compliance schedule, a change in the whole effluent protocol, or any other conditions related to the control of toxicants if one or more of the following events occur:
1. Toxicity was detected late in the life of the permit near or past the deadline for compliance.
 2. The TRE results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the permit issuing authority agrees with the conclusion.
 3. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits, and the permit issuing authority agrees that numerical controls are the most appropriate course of action.
 4. Following the implementation of numerical controls on toxicants, the permit issuing authority agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically.
 5. The TRE reveals other unique conditions or characteristics which, in the opinion of the permit issuing authority, justify the incorporation of unanticipated special conditions in the permit.